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Henry Rufford
Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-127299

DATE: March 22, 1977

MATTER OF: Wackenhut Services, Inc.

DIGEST:

1. Protester's contention that agency evaluators were too severe in judging adequacy of protester's proposed responses to hypothetical problems is not sustained. Lack of detail in responses indicated a lack of understanding of RFP requirements.
2. Offeror's failure to submit to agency evaluators resumes of proposed key personnel did not require rejection of proposal where personnel in question worked for incumbent contractor and were already known to agency.
3. Agency's acceptance of offeror's assurances of verbal commitments from proposed key personnel is justified.
4. Characterization by Award Fee Evaluation Board of offeror's performance under incumbent contract as "excellent" does not prevent Source Evaluation Board from arriving at lower rating of "good" for purposes of proposal evaluation.
5. Under circumstances, Source Evaluation Board could reasonably conclude that estimated cost savings to Government under cost-plus-award fee contract did not require award to offeror ranked second in technical evaluation.

Wackenhut Services, Inc. (Wackenhut) protests the proposed award under Request for Proposals (RFP) 9-BB52-58-6-20P, issued by the National Aeronautics and Space Administration (NASA), of a cost-plus-award fee contract for security protection and fire safety/engineering services at Johnson Space Center (JSC), Houston, Texas. The offeror chosen for award by NASA was Mascn-REguard, a joint venture. Award has been delayed and Wackenhut, the incumbent contractor, has extended its performance pending resolution of the protest.

Of the seven proposals received, three--those submitted by Mason-REguard, by Security Systems of Topeka, Inc., and by Wackenhut--were determined by NASA's Source Evaluation Board (SEB) to be within the competitive range. After receipt of best and final offers from these firms, NASA, on August 31, 1976, announced the selection of Mason-REguard for contract award.

Proposals had been evaluated on the basis of four evaluation criteria: mission suitability factors, cost factors, experience and past performance factors, and other factors. The "mission suitability" criterion, which was numerically scored, was divided into four subcriteria: understanding task requirements, key personnel, work plan, and company resources. Of these four subcriteria, "understanding task requirements" was rated as "most important," the second two subcriteria were "very important" and "company resources" was rated as "important."

As to the four main criteria, Wackenhut's and Mason-REguard's proposals were both rated Good in mission suitability, although Wackenhut's numerical score (724 out of 1000 possible points) was substantially lower than Mason-REguard's (851 points total). As to the cost factor, the SEB expressed a high degree of confidence in the probable cost figures for both Wackenhut and Mason-REguard, as adjusted for correctable weaknesses in each proposal. Wackenhut's cost proposal was the lower of the two, but the difference was considered insignificant by the SEB. In the area of company experience, both offerors were rated as Excellent; as to past performance, Mason-REguard was rated Excellent, while Wackenhut received the lower score of Good. Both competitors were essentially equal in the "other factors" area. In short, it appears that Mason-REguard was chosen for award primarily because its numerical mission suitability score was higher than Wackenhut's.

Wackenhut's protest disputes on several counts the NASA evaluation of its and of Mason-REguard's proposals. As explained below, we must deny its protest.

Under the mission suitability subcriterion of "understanding task requirements," Wackenhut argues that it was downgraded unfairly on its responses to hypothetical problems posed by the SEB. These problems required offerors to establish a fire and electrical hazard checklist and to describe methods to deal with an airplane crashing into the JSC Project Management Building. On the checklist problem,

Wackenhut was downgraded because of a lack of detail in its safety hazards checklist, while on the airplane crash problem, the evaluators felt that there was insufficient detail on factors such as fire prevention, command post and evacuation plans. In contrast, Mason-REguard's checklist identified more hazards (29 compared to 9 for Wackenhut) and its airplane crash program was "well organized and detailed."

In rebuttal, Wackenhut argues that while its responses to these problems could have been lengthier and more detailed, nevertheless its responses were correctly addressed to the problems at hand, and therefore the ratings of poor and fair, respectively, which it received, were too severe. Our review of the record indicates that in the evaluators' estimation, the protester's checklist showed that the firm lacked originality and demonstrated "a poor understanding of the RFP requirement." We cannot say that a rating of poor is unreasonable for this subcriterion. Similarly, it appears to us that the absence of a fire protection plan or evacuation plans from the offeror's solution to the airplane crash problem could cause the evaluators to rate the protester's proposal for this subcriterion as being only fair. We see no basis to question these ratings.

Wackenhut next argues that as to the "key personnel" subcriterion, Mason-REguard's proposal was nonresponsive to the requirements of the RFP because Mason-REguard had not submitted with its proposal the resumes of several key personnel who were performing as employees of Wackenhut under its current JSC contract. The terms of the RFP required that:

"Complete Key Personnel Resumes (Form 1) shall be submitted for all key personnel proposed, including, as a minimum, the Project Manager, Security Chief, Fire Chief, Senior Fire Protection Engineer, and Senior Safety Engineer * * *. Offerors are advised that failure to have key personnel committed to this proposed effort may adversely impact the key personnel scores." (Underscoring supplied.)

Mason-REguard's proposal stated that the resumes of incumbent personnel were not included since they were already on file with NASA. NASA states that the word "may" was used in the RFP by design because the agency recognized that an inflexible requirement for resumes could cause an injustice to incumbent personnel, whose employment

could be placed in jeopardy by the submission of their resumes by a competing firm. At the same time, NASA states that it wanted the RFP to reflect that an offeror who did not submit a resume assumed the risk that the fact situation might not support the nonsubmission. In the case of Mason-REguard, the NASA evaluators determined that they had complete information available to evaluate the proposed incumbent personnel and therefore the offeror was not penalized for lack of resumes. In our opinion the NASA position is reasonable. We do not agree with Wackenhut's contention that Mason-REguard was "nonresponsive" to the RFP resume requirement.

Wackenhut also contends that NASA accepted statements of verbal commitment from Mason-REguard's proposed personnel without adequate verification. Specifically, Wackenhut refers to those proposed personnel who are employed by Wackenhut under its current contract. Mason-REguard had stated in its proposal that "The incumbents in key positions other than the manager [Wackenhut's incumbent manager] have been contacted and have verbally committed themselves to Mason-REguard should they become the successor contractor." While Wackenhut indicates its belief that the facts did not support Mason-REguard's statement, we believe that, notwithstanding some discrepancies which appeared later, the SEB was justified, at the time it evaluated Mason-REguard's proposal, in accepting Mason-REguard's assurance of key personnel commitment. Moreover, the record does not justify a conclusion that Mason-REguard made such representation improvidently or in bad faith.

In this connection, Wackenhut argues that its proposal was unfairly downgraded because of dissatisfaction on NASA's part with the performance of its project manager and senior safety engineer in the previous contract period. These employees had been proposed by Wackenhut for the new contract as well. We note, however, that Mason-REguard had proposed the same senior safety engineer and had also been downgraded for this position. Therefore, Wackenhut was prejudiced in the award selection only as to its choice for project manager. Regarding the project manager, for whom Wackenhut received a score of Poor as compared to Mason-REguard's Excellent, given the shortcomings in performance during the incumbent contract period as reflected in the SEB Report, we believe a rating of Poor is reasonable.

Next, Wackenhut states that its description of company resources, another of the subcriteria, was unfairly downgraded for brevity. Wackenhut argues that, just as it was possible to judge Mason-REguard's proposed employees on the basis of the SEB's knowledge of them, it should have been possible for the SEB to evaluate its company resources from NASA's knowledge of its performance over its preceding nine years as contractor. The record

shows that Wackenhut's past performance record was evaluated under the factor of Past Performance, whereas the company resources factor was designed to measure the offeror's plans for the new contract. We agree with NASA that an offeror's past performance record would not necessarily reveal to the agency evaluator what resources the offeror planned to use for the new contract. Therefore, we have no basis to question the evaluators' rating for this subcriterion.

Turning to the RFP's other main criteria, Wackenhut believes that the SEB's evaluation of Wackenhut as "good" in the area of experience and past performance was inconsistent with three successive years of "excellent" ratings from the JSC Award Fee Evaluation Board, which had determined the amount of the fees awarded to Wackenhut, based upon performance quality, in the previous contract years. We believe the SEB could reasonably arrive at a "good" rating. According to NASA, Wackenhut's overall performance had deteriorated in the last nine months of the contract year ending July 30, 1976. Moreover, as NASA points out, the award fee rating and the SEB rating are distinct evaluations, performed for the most part by different personnel, for different purposes, and using the term "excellent" in different senses. We cannot say, therefore, that the two evaluations are inconsistent.

Finally, Wackenhut contends that its proposed cost, lower than Mason-REguard's by \$84,000, should have influenced the SEB's decision in its favor. According to Wackenhut, the fact that Mason-REguard's cost proposal had to be refigured in its best and final offer indicates Mason-REguard's failure to comprehend mission requirements. Also, Wackenhut stresses that NASA failed to give its excellent cost control record in the past enough weight when comparing its proposed costs with Mason-REguard's.

These arguments provide no basis to question the award to Mason-REguard. The record indicates that after analysis of Wackenhut's and Mason-REguard's best and final cost estimates (which were \$1,752,000 and \$1,836,600 respectively, a difference of about 4.5 percent), the SEB adjusted for probable costs. The probable final cost for Wackenhut was \$1,749,900 as against \$1,776,100 for Mason-REguard, a difference of approximately 1.6 percent. Since estimated costs of contract performance and proposal fees are not to be considered controlling in the award of a cost-reimbursement type contract, see NASA Procurement Regulation 3.805-2, we agree that the cost difference is not controlling in light of the other evaluation factors. Furthermore, while Wackenhut interprets the need for relatively more cost adjustments in Mason-REguard's proposal than in its own as indicative of failure to understand mission requirements,

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NASA indicates that for Mason-REguard as for all other non-incumbent offerors, cost adjustments were greater simply because non-incumbents could not know in detail current wage rates, shift premiums, and other direct cost factors.

We conclude that the judgments rendered by the SEB as to the relative merits of Wackenhut's and Mason-REguard's proposals were reasonable. Wackenhut's protest is denied.

Deputy

R. F. K. 1/12
Comptroller General
of the United States